



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/168252

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 24, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care (CC), a telephone hearing was held on December 08, 2015.

The issue for determination is whether the Department may proceed with collection of a CC overpayment through the state income tax refund interception process.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. CC totaling at least \$6,790.69 was issued on the petitioner's behalf from September 8, 2013, through June 30, 2014. The agency later determined that the petitioner misrepresented or failed

to report a change in income relevant to this time period. The agency's arithmetic in calculating this overpayment is not contested.

3. On June 30, 2014, the Department's local agency mailed a *CC Client Overpayment Notice* and worksheet to the petitioner, advising that her household had been overpaid \$6,790.69 from September 8, 2013, through June 30, 2014. Also on July 1, 2014, the respondent mailed a computer-generated *CC Overpayment Notice* to the petitioner at the same address. Both notices advised of fair hearing rights (45-day filing limit).
4. Petitioner subsequently filed a Request for Fair Hearing regarding the overpayment allegations with the Division of Hearings and Appeals; she failed to appear on the date specified for hearing, and her case was dismissed as abandoned.
5. The Department mailed a Repayment Agreement for this overpayment to the petitioner on September 3, 2014. Petitioner agreed to make \$25.00 monthly payments.
6. The Department mailed dunning letters to the petitioner on October 2, 2014, January 5, 2015, and May 4, 2015. The dunning notices were issued when petitioner missed payments or paid less than she agreed to pay.
7. On August 14, 2015, the Department issued written notice to the petitioner advising that it intended to intercept her state income tax refund to collect \$6,595.69 in W-2 CC overpayments made to her household. She received the interception notice and filed this appeal.

### **DISCUSSION**

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, or overpayment of AFDC or childcare payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues *that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.*  
(emphasis added)

The petitioner argues that she has not missed three payments. Petitioner testified that she contacted the respondent regarding one of the three failures to pay, specifically a \$20.00 payment submitted just prior to January 5, 2015. She testified that she was told not to worry about it, despite receiving a dunning notice. The respondent submitted electronic case comments following the hearing to clarify what petitioner may have been told. A case comment dated May 6, 2015, states, in pertinent part:

Comment: Cl cld rgds to dunning notice states she is making pymts on this expld no Sept payment, Dec pymt was only \$20, and no April pymt advised cl that one more will start collection. ...

Here petitioner did not, and does not dispute, the overpayment. Rather, Petitioner asks that the tax intercept be lifted as she wants to be able to continue monthly payments. The policy on missing payments states:

#### Dunning Notices

If a provider fails to return a repayment agreement, fails to make a payment or pays too little, they will receive a dunning notice. A dunning notice is a past due notice that informs the provider that they are required to pay the balance of the debt and failure to complete and return a repayment agreement could result in delinquency and further collections actions. If a provider receives three (3) dunning notices over the life of the debt, CARES determines the provider to be delinquent and the debt is referred to the Central Recoveries Enhanced System (CRES) collection system for additional collection action including levy, warrant/lien and Department of Revenue (DOR) state tax intercept. If a provider is delinquent on a current overpayment, and he/she receives another overpayment, the second overpayment is automatically considered delinquent, without the provider receiving an additional three (3) dunning notices.

Wisconsin Shares Child Care Subsidy Policy Manual, §4.8.2.

The Division of Hearings and Appeals does not have authority to ignore program regulation or create its own exceptions to that regulation. The Division of Hearings and Appeals does not have equitable powers. See, e.g., *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F. Supp. 540, 545 (E.D. Wis.1977). Petitioner received three correct dunning notices, and I possess no powers of equity to override this fact.

### **CONCLUSIONS OF LAW**

The Department correctly certified the sum of \$6,595.69 as an amount due and proceeded with the action to intercept the petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of February, 2016

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 25, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit